IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/10/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 23436 of 2003
and
W.P.M.P.No. 28956 of 2003 and W.V.M.P.No. 1897 of 2003

P. Vadivel. .. Petitioner.

-Vs-

The Management of Food Corporation of
India, represented by its Senior
Regional Manager and Disciplinary
Authority, Regional Office,
No.5/54, Greams Road, Chennai-600 006. .. Respondent.

Petition file under Article 226 of the Constitution of India, for issuance of a Writ of Ceritiorari, as stated therein.

For Petitioner : Mr. V. Prakash

For Respondent : Mr. A.S. Thambusamy

:ORDER

By consent of both parties writ petition itself is taken up for disposal. The petitioner challenges Memorandum No.4(16)/99 CR Cell dated 07-08-2003 in and by which he was called upon to submit his representation, if any against the proposed disagreement of articles of charges VI and VIII and also in respect of articles of charges I to V on the enquiry report to the disciplinary authority.

2. The case of the petitioner is briefly stated hereunder:
Certain charges have been framed against the petitioner which resulted in enquiry proceedings. The respondent had issued proceedings reversing the findings of the enquiry officer with regard to the charges in respect of which the petitioner was found to be not guilty. Therefore, the petitioner has filed W.P.No. 21867 of 2003 before this Court. Even at the admission stage, the respondent agreed to withdraw the first show cause memo; accordingly

issued a fresh memo, namely, the impugned proceedings dated 7-8-2003. Even in the present proceedings, according to the petitioner, the disagreement reflected in the show cause memo could not have been without notice to the petitioner. In other words, according to the petitioner, the impugned show cause memo has the very same defect which was there in the earlier proceedings that was challenged in W.P.No. 21867/2003. It is settled law that before differing with the findings of the enquiry officer, the petitioner should be put on notice with regard to the grounds based on which the disciplinary authority wants to overrule the findings of the enquiry officer that are favourable to the petitioner and the petitioner is entitled to have an opportunity to show cause. Great prejudice has been occasioned to the petitioner by the tenor of the impugned proceedings.

3. The respondent has filed a counter affidavit wherein it is stated that as observed by this Court in W.P.No. 21867 of 200 3, the earlier memo dated 15-7-2003 was withdrawn and the impugned memorandum was issued. The impugned memorandum is as per FCI Staff Regulation. When the disciplinary authority differs with the findings of the enquiry officer, he has to put on notice the delinquent employee the grounds of disagreement, call upon him to submit his explanation before final findings are arrived at. By the impugned memo, the petitioner was furnished with the grounds of disagreement in respect of charges VI and VIII and was given an opportunity to submit his representation, if any, against the proposed disagreement and also findings of the enquiry officer in respect of charges I to V. Only reasons of disagreement were furnished to the petitioner and he was called upon to submit his representation. Therefore, the impugned memorandum is valid and legal.

4. Heard Mr. V. Prakash, learned counsel for the petitioner and Mr. A.S. Thambusamy, learned counsel for the respondent.

5. In the light of the order to be passed hereunder, there is no need to refer all the factual details as averred in the affidavit as well as counter affidavit filed by the petitioner and respondent respectively. It is seen that in respect of certain charges against the petitioner, an enquiry officer was appointed who conducted domestic enquiry. He submitted his report on 8-7-2003 holding that charges I to V were proved and charges VI to VIII were not proved. The disciplinary authority agreed with the findings of the enquiry officer with regard to charges I to V and disagreed with findings in respect of charges VI and VIII. Therefore, a memorandum dated 15-7-2003 was issued stating the reasons of disagreement and the petitioner was called upon to submit his explanation within 15 days. Questioning the same, the petitioner filed Writ Petition No. 21867 of 2003 challenging the said memorandum on the ground that the respondent had come to a final conclusion without affording opportunity to the petitioner. It is further seen that even at the admission stage, based on the observation of this Court, the memorandum dated 15-7-2003 was withdrawn and the impugned memorandum was issued. It is the claim of Mr. V. Prakash, learned counsel for the petitioner that it is the settled position of law that before differing with the findings of the enquiry officer, the petitioner should be put on notice with regard to the ground based on which the disciplinary authority wants to over-rule the findings of the enquiry officer that are favourable to the petitioner and the

petitioner is entitled to have opportunity to show cause. It is also his claim that the observation made in the impugned memorandum has caused great prejudice to the petitioner. In the said claim, I have carefully perused the impugned memorandum dated 7-8-2003 which would show that the disciplinary authority, after giving reasons, arrived at a conclusion that enquiry officer had erred in holding that charges VI and VIII have been proved. After saying so, the petitioner was given an opportunity to submit his representation against the proposed disagreement of articles of charges VI and VIII and also in respect of articles of charges I to V on the enquiry report to the disciplinary authority. I have also perused the relevant FCI Staff Regulation. It is well settled service law that when the disciplinary authority differs from the findings of the enquiry officer, he has to put on notice on the delinquent officer the grounds of disagreement, call upon him to submit his explanation before final findings are arrived at. Inasmuch as the disciplinary authority has not agreed with the findings in respect of charges VI and VIII of the enquiry officer, as per the said legal position, the petitioner was given opportunity to submit his representation, if any, against the proposed disagreement. Though in the earlier memorandum, the disciplinary authority has specifically concluded that those articles of charges are proved, in the impugned memorandum, the said authority has conveyed his disagreement with the findings of the enquiry officer for which he has furnished reasons for the same. The said action cannot be faulted with. I am unable to agree with the contention of the learned counsel for the petitioner. As said earlier, the settled legal position is, when the disciplinary authority differs with the findings of the enquiry officer, he has to put on notice the delinquent officer the grounds of disagreement, call upon him to submit his explanation before final findings are arrived at. While disagreeing with the findings of the enquiry officer, if the disciplinary authority does not give any reason, the delinquent officer may not be in a position to submit his explanation/reply with regard to the disagreement. Accordingly, it is but proper for the disciplinary authority to furnish the grounds of disagreement to the delinquent employee by way of notice, giving opportunity to put-forth his explanation, if any. Whenever the disciplinary authority disagrees with the enquiry officer, on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. It is also clear that any further action against the petitioner could be taken only after furnishing the copies of the report of the disciplinary authority in disagreeing with the findings of the enquiry officer and only after receiving explanation from him, further orders should be passed. Similar view has been expressed by D. Murugesan, J., in Muneesan v. Indian Overseas Bank, reported in (2003) 3 M.L.J. 319. The procedure adopted by the disciplinary authority by sending the impugned memorandum is perfectly in order and in accordance with the settled legal position. The perusal of the impugned memorandum clearly shows that the disciplinary authority has not passed final orders. As said earlier, the disciplinary authority has to give reasons for disagreement if he is not accepted the finding of the enquiry officer in respect of

particular charge. Only after furnishing disagreement note, obtaining and considering the representation of the petitioner, final orders could be passed. If the grounds of disagreement are not furnished, the delinquent employee will not be in a position to submit his representation. I am satisfied that by the impugned memorandum, no prejudice would be caused to the petitioner. The impugned memorandum is also in terms of FCI Staff Regulation and within the said service law. The memorandum does not suffer from any defect and the same is valid and legal.

6. In the light of what is stated above, there is no merit in the writ petition; consequently the same is dismissed. No costs. Connected miscellaneous petitions are closed.

R.B.

Index:- Yes.
Internet:- Yes.

To:-

The Management of Food Corporation of
India, represented by its Senior
Regional Manager and Disciplinary
Authority, Regional Office,
No.5/54, Greams Road, Chennai-600 006.

P.S.J.,

After pronouncement of the order, learned counsel for the petitioner seeks two weeks' time for filing reply to the impugned show cause notice. The petitioner is granted two (2) weeks time from today for submitting the reply to the impugned show cause notice.

22-10-2003.